

BEFORE THE

BOARD OF MEDICAL QUALITY ASSURANCE

DIVISION OF MEDICAL QUALITY

DEPARTMENT OF CONSUMER AFFAIRS

STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

ALAN EDWARD ZIMMER, M. D.
847 South Clinton
Defiance, Ohio 43512
Certificate No. C-029568

Respondent

NO. D-3286

N-26992

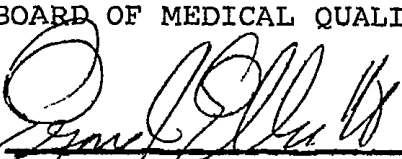
DECISION

The attached Proposed Decision of the Administrative Law
Judge is hereby adopted by the Board of Medical Quality Assurance
as its Decision in the
above-entitled matter.

This Decision shall become effective on September 11, 1986

IT IS SO ORDERED August 12, 1986.

DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE


EUGENE J. ELLIS, M.D.
President

FINDINGS OF FACT

I

The accusation and first amended accusation were made by Kenneth J. Wagstaff in his official capacity as the Executive Director of the Board of Medical Quality Assurance, State of California (the Board).

II

Process was duly served in the manner prescribed by law. Compliance with Sections 11505 and 11509 of the Government Code was established.

III

Physician and surgeon certificate No. C-029568 was issued to Alan E. Zimmer, M.D. (respondent) by the Board on October 17, 1967. This certificate is in a cancelled status at the present time.

FIRST CAUSE OF ACTION

IV

On May 21, 1984, in the United States District Court for the Northern District of Ohio, Western Division, respondent was adjudged Guilty of having violated 18 U.S.C. 371 (Conspiracy To Commit Offense Against Or To Defraud The United States- Count 1), 26 U.S.C. 7201 (Willfully Attempting To Evade Or Defeat The Payment Of Income Taxes Due And Owing- Count 2) and 18 U.S.C. 1001 (Making Of False, Fictitious Or Fraudulent Statements Or Representations In A Matter Within The Jurisdiction Of A Federal Agency- Count 3), all felonies and crimes involving moral turpitude (Kirby v. Alcoholic Beverage Control Appeals Board {1969} 270 C.A. 2d 535).

V

Respondent was sentenced as follows:

- a) Count 1, five years imprisonment and a fine of \$10,000.
- b) Count 2, three years imprisonment.
- c) Count 3, one year imprisonment.

The sentences were ordered to run concurrently.

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DIVISION OF MEDICAL QUALITY
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In the Matter of the Accusation)	
Against:)	
)	
ALAN EDWARD ZIMMER, M.D.)	NO. D-3286
847 South Clinton)	
Defiance, Ohio 43512)	N 26992
Certificate No. C-029568)	
)	
Respondent)	
)	
)	

PROPOSED DECISION

This matter was heard before Stewart A. Judson, Administrative Law Judge, State of California, Office of Administrative Hearings on June 20, 1986 at San Francisco, California.

The complainant was represented by Wilbert E. Bennett, Deputy Attorney General. Alan Edward Zimmer, M.D. and his attorney of record, Laurence J. Rab, Esq.; Cromer, Faber, Rab & Claypool; Suite 114, 345 W. Second Street, Dayton, Ohio 45402 were not present.

RULING

a) This matter was originally scheduled for hearing on May 20, 1986.

b) The matter was continued on respondent's motion, by stipulation of the parties, to June 20, 1986.

c) Respondent moved by motion received on June 19, 1986 for a continuance on grounds that he had a Habeas Corpus proceeding pending in the State of Kentucky. Respondent did not indicate the time and date of the proceeding or when it had been scheduled.

d) Respondent's motion was denied on June 19, 1986 for lack of good cause within the meaning of Section 11524 of the Government Code.

VI

a) Respondent filed an appeal in the United States Court of Appeals for the Sixth Circuit on May 23, 1984. On March 26, 1985, the Court of Appeals filed its decision affirming the District Court's judgment. From this Court's order, respondent filed motions on April 25, 1985 to vacate sentence and to stay execution pending disposition of his motion to vacate in the District Court. The District Court denied these motions on June 27, 1985, and respondent appealed said order to the Court of Appeals on July 8, 1985.

b) On July 15, 1985, the Court of Appeals granted respondent a stay of execution pending appeal. On September 20, 1985, the Court of Appeals reconsidered upon motion of the United States and denied respondent's motion for stay of sentence and release pending appeal.

c) On November 15, 1985, the Court of Appeals filed its decision once again affirming the District Court's judgment. The evidence failed to establish that respondent has pursued further appeal.

VII

The indictment filed against respondent indicates that he was found Guilty of engaging in a conspiracy to and did willfully and knowingly attempt to evade payment of substantial income taxes due and owing for the years 1975 and 1976 and for those taxes subsequently assessed for the years 1973, 1974, 1977, 1978 and 1979.

VIII

Respondent was convicted of offenses which are substantially related to the duties, qualifications or functions of a licensed physician and surgeon (Windham v. BMQA {1980} 104 C.A. 3d 461; Thorpe v. Board of Examiners {1980} 104 C.A. 3d 111).

SECOND CAUSE OF ACTION

IX

a) On March 20, 1985, the State Medical Board of Ohio issued an Order effective May 1, 1985, indefinitely suspending respondent's license to practice medicine and surgery in the State of Ohio and further ordering that re-

instatement would not be considered for a minimum of three years and then only after respondent submits a written application for reinstatement and appears before the Board. The action was taken based upon respondent's aforescribed conviction of three felony counts.

b) Respondent appealed the Ohio State Medical Board's order to the Court of Common Pleas of Defiance County, Ohio, which filed its order confirming said decision on October 2, 1985.

DETERMINATION OF ISSUES

I

The Board retains jurisdiction over respondent's certificate under Section 118(b) of the Business and Professions Code.

II

FIRST CAUSE OF ACTION: Respondent's conviction constitutes unprofessional conduct under Section 2236 of the Business and Professions Code. Cause for disciplinary action exists under Sections 2227 and 2234 of said Code.

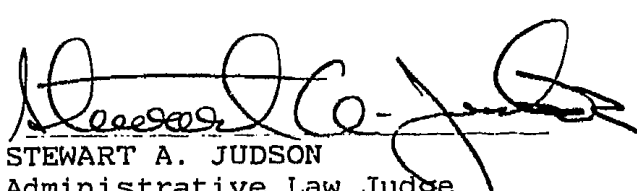
III

SECOND CAUSE OF ACTION: Respondent's discipline by the Ohio State Medical Board constitutes unprofessional conduct under Section 2305 of the Business and Professions Code. Cause for disciplinary action exists under Sections 2227 and 2234 of said Code.

ORDER

Certificate No. C-029568 of Alan Edward Zimmer, M.D. is revoked under Determinations I and II, separately and severally.

DATED: June 24, 1986


STEWART A. JUDSON

Administrative Law Judge

SAJ:sj

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of the State of California
2 WILBERT E. BENNETT
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5 Attorneys for Complainant
6
7

8 BEFORE THE BOARD OF MEDICAL QUALITY ASSURANCE

9 DIVISION OF MEDICAL QUALITY

10 STATE OF CALIFORNIA

11 In the Matter of the Accusation)
Against)
12)
ALAN EDWARD ZIMMER, M.D.)
13 847 South Clinton)
Defiance, Ohio 43512)
14 Certificate No. C-029568,)
Respondent.)

NO. D-3286

ACCUSATION

16
17 KENNETH J. WAGSTAFF, complainant, charges and alleges
18 as follows:

19 1. He is the Executive Director of the Board of
20 Medical Quality Assurance, State of California, and makes these
21 charges and allegations in his official capacity and not
22 otherwise.

23 2. On or about October 17, 1967, respondent Alan
24 Edward Zimmer (hereinafter referred to as "respondent") was
25 issued physician's and surgeon's certificate number C-029568.
26 Said certificate expired due to nonpayment of fees on or about
27 May 31, 1983.

1 3. Business and Professions Code sections 2227 and
2 2234 provide, in pertinent part, that the Division of Medical
3 Quality shall take disciplinary action against any licensee who
4 is guilty of unprofessional conduct.

5 4. Business and Professions Code section 2236(a)
6 provides, in pertinent part, that conviction of any offense
7 substantially related to the qualifications, functions, or
8 duties of a physician and surgeon constitutes unprofessional
9 conduct.

10 5. Business and Professions Code section 118(b)
11 provides, in pertinent part, that the suspension or expiration
12 of a physician's and surgeon's certificate by operation of law
13 shall not deprive the Division of Medical Quality of juris-
14 diction to proceed with disciplinary action.

15 FOR A CAUSE FOR DISCIPLINARY ACTION

16 6. Respondent has subjected his license to discipline
17 under Business and Professions Code section 2236(a) (conviction
18 of offense substantially related to the qualifications, functions,
19 or duties of a physician and surgeon), as more particularly set
20 forth as follows:


21 (a) On or about May 21, 1984, respondent was convicted
22 in the United States District Court, Northern District of Ohio,
23 Case No. CR 83-87-01, of one count of violation of Title 18,
24 United States Code section 371 (conspiracy to commit offense
25 against or to defraud the United States), one count of violation
26 of Title 26, United States Code section 7201 (willfully attempt-
27 ing to evade or defeat the payment of income taxes due and owing),

1 and one count of violation of Title 18, United States Code
2 section 1001 (making of false, fictitious, or fraudulent state-
3 ments or representations in a matter within the jurisdiction of
4 a federal agency). Pursuant to said convictions, respondent was
5 sentenced to imprisonment for five (5) years on count one,
6 three (3) years on count two, and one (1) year on count three,
7 to be served concurrently, and was fined the sum of ten thousand
8 dollars (\$10,000) on count one.

9 (b) The aforementioned offenses, to a substantial
10 degree, evidence present or potential unfitness to perform the
11 functions authorized by a physician's and surgeon's certificate
12 in a manner consistent with the public health, safety, or
13 welfare.

14 WHEREFORE, it is prayed that a hearing be held to
15 suspend or revoke respondent's physician's and surgeon's certi-
16 ficate and to take such other action as is deemed just and
17 proper.

18 DATED: December 24, 1984

19 
20 KENNETH J. WAGSTAFF
21 Executive Director
22 Board of Medical Quality Assurance

23 Complainant
24
25
26
27

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of the State of California

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11 In the Matter of the Accusation)
Against:)

12 ALAN EDWARD ZIMMER, M.D.)
13 847 South Clinton)
Defiance, Ohio 43512)
14 Certificate No. C-029568,)

NO. D-3286

FIRST AMENDMENT
TO ACCUSATION

15 Respondent.)
16

17 KENNETH J. WAGSTAFF, complainant, charges and alleges
18 in his official capacity as Executive Director of the Board of
19 Medical Quality Assurance, State of California, as a First
20 Amendment with reference to Accusation No. D-3286 already on
21 file in this proceeding, as follows:

22 Paragraph 4a is hereby added to read as follows:

23 4a. Business and Professions Code section 2305 provides
24 that the revocation, suspension, or other discipline by another
25 state of a license or certificate to practice medicine issued by
26 the state to a licensee under this chapter (California Medical
27 Practice Act, Business and Professions Code sections 2000-2505

1 inclusive) constitutes grounds for disciplinary action for
2 unprofessional conduct against such licensee in this state.

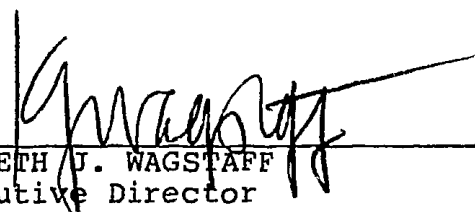
3 A second cause for disciplinary action is hereby
4 added to read as follows:

5 FOR A SECOND CAUSE FOR DISCIPLINARY ACTION

6 7. Respondent has subjected his license to discipline
7 under Business and Professions Code section 2305 in that on or
8 about March 20, 1985, the State Medical Board of Ohio issued a
9 disciplinary order against respondent indefinitely suspending
10 his license to practice medicine in that state. Said discipli-
11 nary order was confirmed by the Court of Common Pleas, Defiance
12 County, Ohio, on October 2, 1985, and became effective on said
13 date. (Copies of documents evidencing said disciplinary order
14 and its court confirmation, including a citation letter dated
15 June 12, 1984, the Entry of Order, the Report and Recommendation,
16 and the Board minutes of February 20, 1985, adopting said
17 Report and Recommendation, as well as the Judgment Entry of the
18 Court of Common Pleas, are attached hereto as Exhibit A and are
19 incorporated by reference as though fully set forth.)

20 WHEREFORE, it is prayed that a hearing be held to
21 suspend or revoke respondent's physician's and surgeon's
22 certificate and to take such other action as is deemed just and
23 proper.

24 DATED: April 16, 1986

25
26 
KENNETH J. WAGSTAFF
Executive Director

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